

Testimony Delivered by
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Mr. Chairman, Senator Breaux, Senator Kohl, distinguished senators . . . good afternoon.

I am honored to be here today to discuss Iowa's experience with requiring criminal history background checks for nursing facility employees. Since July 1, 1997, Iowa has required that all nursing facilities obtain a criminal history background check on prospective employees prior to hiring the individuals. To date, more than 56,000 background checks have been performed by the Iowa Division of Criminal Investigation (DCI) on prospective employees. On average, 12 percent of those background checks have identified potential nursing facility employees to have some form of criminal conviction - whether it be for armed robbery, assault, or even murder (see attachments 1 and 2). We, in Iowa, believe our criminal history background check law is keeping some of society's most violent offenders from preying upon one of the most vulnerable segments of our society - the residents of our state's more than 430 long-term care facilities.

While the current law may be providing a sense of security for nursing facilities residents and their family members, that hasn't always been the case. In December 1996, the Quad-City Times published a special six-part series entitled "Abuse and Neglect: An investigative report on Quad-City nursing homes." As part of his year-long investigation, Quad-City Times reporter Clark Kauffman studied literally thousands of state inspection reports, court files, police reports, and nursing home records. In one particular instance, Mr. Kauffman found an area nursing facility was routinely hiring violent criminals, thieves and drug users to work as caregivers. Take, for instance, the following example:

Daniel Ghys worked in a Davenport, Iowa, nursing facility's kitchen, yet he has faced charges of theft and forgery. In 1993, he allegedly used another person's credit card to buy \$1,900 worth of jewelry and merchandise. He was unemployed at the time, but was hired soon after to work at a Rock Island, Illinois, health care center. He lost that particular job when he failed to appear at work after 'partying' the night before. In 1994, the Iowa Department of Corrections reported that Ghys should be imprisoned due to his criminal record, his prior imprisonment, lack of job stability and his continuing to "commit criminal acts to support himself." At about the same time that report was issued, he was working at the Davenport nursing facility.

This example, while blatantly showing how a convicted felon can move from nursing facility to nursing facility - even across state lines - isn't the worst illustration. In its series, the Quad-City Times chronicled the employment history and criminal records of numerous nursing facility workers who had been convicted of domestic violence, assault, burglary, even murder. Prior to July 1, 1997, nursing facilities had the option to check an employees' criminal history, but few administrators ever did so. Why would someone hire an individual to care for our senior citizens without knowing about the individual's character? Perhaps James Brennan, a former nursing home administrator who now works as a consultant, best explained the hiring practices at health care facilities.

"In the nursing home industry, we have what I call a medical hire - which means that you hire a person if they have a pulse," Brennan explains. "Then, one step up from that, you have the appliance hire - which means you hire a person who has a telephone and an alarm clock and who might show up for work on time."

The administrator of a former Davenport, Iowa, nursing facility - which has since been closed by my

Department for numerous violations - said she didn't have time to monitor the off-duty activities of her employees. "We hire down and outs," she explained. "And we know that as soon as they are back 'up' again, they'll be gone." Some nursing facilities were so desperate for workers that they'd hire applicants on the spot, pay them a \$200 sign-up fee and have them report for work that same night. Never once was an individual's criminal history checked or considered.

As a follow-up to its special report, the Quad-City Times' editorial board called upon Iowa lawmakers to pass legislation requiring nursing homes to conduct criminal background checks on aides, nurses, maintenance workers and other personnel. "Nursing homes always have had the option of making criminal record checks, but some of them refuse to be bothered -- which is why convicted killers, robbers and thieves are caring for the elderly . . .," the board said. Thank goodness the plea of the newspaper didn't fall upon deaf ears.

Two Quad-City area legislators, state Representative Mona Martin and state Senator Maggie Tinsman, responded to the concerns of their constituents and spearheaded passage of legislation which required nursing facilities to conduct criminal history and dependent adult abuse record checks prior to employment (see attachment 3). The law also requires that if a person has been convicted of a crime or has a record of founded child or dependent adult abuse, the Iowa Department of Human Services (DHS) is to evaluate whether the crime or founded abuse warrants prohibition of employment. The evaluation is to take into consideration the following factors:

- The nature and seriousness of the crime or founded abuse in relation to the position sought or held;
- The time elapsed since commission of the crime or founded abuse;
- The circumstances under which the crime or founded abuse was committed;
- The degree of rehabilitation;
- The likelihood that the person will commit the crime or founded abuse again, and
- The number of crimes or founded abuse committed by the person involved.

If the evaluation determines that the individual has committed a crime or has a founded history of abuse which warrants prohibition from employment, that individual is not to be employed in any facility licensed by the State of Iowa.

How effective is the new law? According to an analysis of statistics, facilities are requesting evaluations for about one-half (47 percent) of the potential employees with criminal histories or founded abuse (see attachments 4 and 5). Of those being evaluated, the DHS has determined the following:

- Approximately 60 percent of the individuals being evaluated are deemed to be employable without any restrictions;
- Twenty-nine percent of the individuals are deemed to be employable with some restrictions; and
- The remaining individuals, about 10 percent, are determined to be unemployable under any circumstances in a nursing facility setting.

While there is no list of crimes or abuse circumstances that will automatically preclude someone from employment, the following offenses warrant serious evaluation: Crimes against people, crimes involving firearms, and repeat offenses. Also, if an individual has been involved in an alcohol or drug-related crime, he or she must provide proof that something has been done to deal with the substance abuse problem.

Also, the Iowa law requires facilities to conduct the criminal history and child and dependent adult

abuse record checks for anyone employed through a temporary agency supplying personnel to a nursing facility as well as anyone providing services to nursing facility residents under a contract for services. This latter category could include occupational or physical therapists who provide direct care to facility residents.

Failure on the part of a facility to conduct the required checks or to obtain proof that employees have clean records could result in a conditional license or denial, suspension, or revocation of a facility's license. Also, the Department of Inspections and Appeals could issue a citation to a facility for violations of the law. Fortunately, despite some objections to the law, only one nursing facility has been fined for failure to conduct criminal history and dependent adult abuse record checks.

While we have been fortunate in Iowa in implementing our criminal history record check law, there has been some opposition and obstacles to overcome. A few nursing facility administrators have expressed concern regarding the \$13 per record check cost, as an additional financial burden placed on them. In order to obtain a complete criminal history, a facility must submit every name used by a potential employee, including all maiden and married names. A twice divorced individual, therefore, could require as many as three or four record checks at a total cost of \$39. While this amount may seem insignificant in relation to the overall operating costs of a nursing facility, industry representatives report the statewide cost of criminal history checks is exceeding \$600,000 per year. However, it has been determined that this cost is reimbursable under the federal Medicaid and Medicare guidelines.

The industry also is concerned that the time involved in the process is too long and prevents facilities from hiring needed employees in a timely fashion. Currently, the Division of Criminal Investigation (DCI) is able to conduct its criminal history and dependent adult abuse record checks within 24 hours of receipt of the application. Likewise, the Department of Human Services (DHS) is able to complete its evaluations within a period of two to 10 days, depending upon the information submitted by the applicant and the nature and/or seriousness of any crimes or founded abuse.

Just how good are the criminal history and dependent adult abuse record checks? In truth, the record checks are only as good as the information provided by the applicants and facilities. Iowa uses an individual's name, birth date, and social security number as the basis for the criminal history checks. Most law enforcement officials will tell you that the only true way to determine an individual's identification is through the use of fingerprints. In fact, the Federal Bureau of Investigation (FBI) keeps its criminal history records only on the basis of fingerprints. The problem associated with records maintained by name, date of birth, and social security number is best illustrated by the following information from the DCI. Of the more than 350,000 criminal records on file in Iowa, 260 of them contain identical names, birthdays, and social security numbers. Also, a records check based on names and social security numbers does not detect assumed names and duplicate social security numbers used by the criminal element in our society.

An additional problem faced by facilities is that some states prohibit the release of criminal history data to all but authorized law enforcement agencies. While a facility could contract with a private investigation or security firm to conduct criminal history checks in other states, both the cost and paperwork hurdles could be high. The problems associated with evaluating individuals with out-of-state criminal histories, likewise, could be staggering and time-consuming. For instance, fingerprint checks conducted by the FBI are currently taking between 30 and 60 days to complete.

And what about the "potentially abusive" individuals who have fallen between the cracks of the system? Unfortunately, not all abusive caregivers ever face criminal actions for a multitude of reasons, including a resident's fear of retribution by a caregiver against whom a complaint has been filed or a local prosecutors reluctance to take to trial a seemingly insignificant case. Often, even though disciplinary

action has been taken against an individual by a professional licensing board, this information is difficult to obtain. On more than one occasion, a licensed practical nurse or registered nurse has been able to continue working in a long-term care setting simply because nobody contacted the Board of Nursing. Under federal law, certified nurse aides who have a history of founded abuse are prohibited from ever working in a federally-certified long-term care facility. Most nursing facility administrators are aware of this federal mandate and routinely contact the Department's Nurse Aide Registry to verify a certified nurse aide's employability.

Recognizing this lack of information, Iowa lawmakers during the last session enacted new legislation creating a "single contact repository" which will allow facilities to access not only criminal history and dependent adult abuse records but also data maintained by the state's professional licensing boards and child and dependent abuse registries. I believe accessing the information may allow the detection and prevention of hiring abusive individuals before their behavior has attained a criminal level. The computerized repository will allow for a simultaneous records check for every applicant at an Iowa nursing facility. Unfortunately, funding for this particular project was appropriated at a level which only allows for the initial start-up costs, estimated at \$125,000. We are hopeful that the Legislature will fully fund the remainder of this unique, and vital, service during the 1999 session.

In closing, allow me to make a few comments regarding federal legislation requiring criminal history background checks. In order for any system to be effective, it must provide timely service. Nursing facilities are facing a growing shortage of employees. If a job applicant is required to forego employment for any significant period of time prior to completion of a criminal record check, that applicant will simply accept employment in another industry. A high percentage of nursing facility employees receive very minimal wages. People in this segment of society cannot afford to wait for a pay check. The industry cannot afford to lose willing employees.

A viable criminal record check must also be cost-effective. Money spent by a nursing facility to conduct criminal records checks is often money that may have been spent to provide additional direct care and services to the facility's residents. While criminal records checks are vital to assuring the safety of nursing facility residents, they are obtainable at an often considerable cost.

As indicated earlier, the only way to truly establish an individual's identity, and therefore determine whether a criminal history exists, is through fingerprints. This procedure will be costly and additional resources may need to be added in order to address the timeliness issues. A criminal history check based on an individual's fingerprints will prevent individuals from changing jobs by changing locations, such as often happens in the border areas of our state. A significant factor in implementing a fingerprint-based identification system is the technical expertise involved in obtaining the actual "prints". The average nursing facility employee generally is not experienced in "rolling" fingerprints, thus prospective employees have to endure the time and expense associated with traveling to a local law enforcement office to have his or her fingerprints taken. While this precautionary step is necessary to obtain an accurate and complete criminal history records check, it does place additional burdens on the prospective employee, the hiring facility, and local law enforcement agencies.

Also, federal legislation may be necessary to authorize states to share data contained in the various criminal history records. Standardization, too, may need to be addressed. We've seen instances with the nurse aide registry where states differ in their interpretations of what constitutes abuse. In fact, some states will place a nurse aide on its registry if the individual is late in making child support payments or has failed to pay local income taxes. The only way the shared data will be helpful is if a minimum set of standards is established for criminal history records while, at the same time, states are encouraged to establish even higher standards.

It has often been suggested that professional licensing records also need to be examined if we are to truly identify the potential abusers of nursing facility residents. Take, for example, a situation not unlike that sometimes found by DIA health facilities surveyors. A professionally-licensed employee at a nursing facility who abuses a resident in his or her care may not be prosecuted by the local authorities who deem the crime "too insignificant" to take to court. However, the final report of our findings - if a 'professional' has a founded instance of abuse - is automatically and routinely sent to the appropriate professional licensing board for further disciplinary action. Unless a hiring facility contacts the professional licensing board, the facility may not be aware of past disciplinary actions. In such an example, a criminal history background check alone would find nothing to cause concern to the hiring facility.

It was this sort of problem, untangling and making sense of the vast number of data bases maintained by various professional licensing boards, that Iowa General Assembly wished to address in its 'single contact repository' legislation that I briefly mentioned just a while ago. I would suggest that Congress, too, may want to consider expanding background records checks to include the multitude of data maintained by professional licensing boards throughout the country which has just recently become accessible with the advent of modern computer systems.

Finally, I urge Congress to stand firm in its commitment to the residents of our country's long-term care facilities. We have an opportunity to protect and improve the quality of life for millions of Americans residing in nursing facilities. I urge you to seize that opportunity.

Thank you.